IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2365 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LEENA V SWADIYA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS KHYATI P HATHI for Petitioner,MR PV HATHI for Petitioner.
MS FALGUNI PATEL, AGP for Respondent No.1.
None for Respondent Nos. 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 10/10/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed that appropriate direction may be given to the respondents no.1 and 2 to continue her in

service as lecturer in Gujarati on regular basis and that her services may not be terminated at the end of academic year.

This petition is pending before this Court since 1992. The petitioner has continued in service in view of interim order granted by this Court. Initially, the petitioner was appointed as lecturer in Gujarati subject in Dharmendrasinhji College, Rajkot by order dated 25-3-1991. Subsequently, by order dated 13-12-1991, she was appointed as a lecturer in R.R.Lalan College, Bhuj. As per the appointment order, her appointment was temporary till GPSC selected candidate is available. Since the petitioner was apprehending termination, she has filed this petition with a prayer that her services should be regularized.

Learned AGP submitted that in view of the judgement of Division Bench of this Court in **K.D.Vohra V. Kamleshbhai Gobarbhai Patel** reported in **2003 (2) GLR 1342,** the petitioner cannot be continued on said post as her appointment was on ad-hoc basis. She further submitted that in view of the directions given by this Honourable Court in Special Civil Application No.5415/1997, petitioner's services would be continued till GPSC selected candidate is available or any other employee is transferred from other department to the department where petitioner is serving. She further submitted that even if any occasion arises for terminating the services of the petitioner, principle of 'last come first go' will be followed.

In response to the petition, affidavit-in-reply has been filed by Joint Director, Commissioner of Higher Education Office, Gandhinagar. In paragraph 5 of the affidavit, it is stated that the petitioner was appointed as ad-hoc lecturer and at present she is working in

Government Arts College, Gandhinagar, as no GPSC selected candidate is appointed vice her on the said post.

I have heard both the learned advocates and I have also gone through the decision of learned Single Judge delivered in Special Civil No.7604/1997 and allied matters dated 6-2-2006. I have also gone through the judgement of learned Single Judge delivered in in Special Civil Application No.5415/1997.

Considering the facts and circumstances of the case and considering aforesaid judgements, prayer of the petitioner to the effect that her services may be regularized cannot be granted, however, this petition is disposed of with following directions.

(i) Services of the petitioner may be continued till she is required to be replaced either by GPSC selected candidate or by any other suitable candidate by way of transfer.

(ii) In case the services of the petitioner are required to be terminated, then principle of 'last come first go' should be followed.

(iii) It is pointed out by Mr.Hathi, learned advocate for the petitioner that some similarly situated lecturers have already been sent to private granted colleges. If that be so and if Government has evolved any policy to send such lecturers in private granted college, case of the petitioner also may be considered, however, it is for the Government to consider whether petitioner can be sent in a private granted college as a lecturer and this question is left to the discretion of the Government.

(iv) As per the judgement of the Division Bench, the Government shall consider to form a separate cadre and, thereafter, the Government may also consider whether the petitioner can be accommodated in such cadre in light of the directions given by Division Bench of this Court.

In view of aforesaid directions, this petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

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